

Amendment and Response

Applicant: Timothy V. Stagg et al.

Serial No.: 09/728,697

Filed: December 1, 2000

Docket No.: 54186US017

Title: PLASTIC FILM PACKAGING WITH TEARABLE TAPE STRIP

REMARKS

This Amendment is responsive to the Office Action mailed September 25, 2002. Under 35 U.S.C. 102(b), claims 1, 2, 5, 8, 12, 14, 17, 18, 21, 24, 28, 30, 35, 36, 38, 42, 44, 45, 47, 48, 49, 51, and 52 were rejected as being anticipated by Union Carbide, GB 923,899 ("Union Carbide"); claims 1, 2, 4, 5, 8, 10, 13, 14, 17, 18, 20, 21, 24, 26, 29, 30, 33, 35, 36, 38, 39, 42, 44, 45, 47, 48, 51, and 52 were rejected as being anticipated by J.E. Snyder, U.S. Patent No. 2,579,443 ("Snyder"); claims 1, 5, 14, 17, 21, 30, 33, 35, 36, 38, 39, 45, 47, 49, 50, and 51 were rejected as being anticipated by Shohei Hoshino et al., U.S. Patent No. 3,545,161 ("Hoshino"); and claims 1, 2, 4, 5, 8, 10, 13, 14, 16, 17, 18, 20, 21, 24, 26, 29, 30, 32, 35, 37, 38, 41, 42, 44, 45, 47, 48, 51, and 52 were rejected) as being anticipated by Riddell, U.S. Patent No. 4,773,541 ("Riddell"). Additionally, claims 1, 5, 6, 8-10, 13, 14, 17, 21, 22, 24-26, 29, 30, 33-35, 38, 39, 45, 47, 48, and 52 were rejected under 35 U.S.C. 102(e) as being anticipated by Hodson et al., U.S. Patent No. 6,316,036 ("Hodson"). Furthermore, under 35 U.S.C. 103(a), claims 3, 19, and 43 were rejected as being unpatentable over Riddell; claims 7 and 23 rejected as being unpatentable over Hodson; claims 11 and 27 rejected as being unpatentable over Hoshino further in view of Morris et al., U.S. Patent No. 4,781,296 ("Morris"); claims 15 and 31 rejected as unpatentable over Riddell further in view of Kim, U.S. Patent No. 5,203,634 ("Kim"); and claim 36 rejected as being unpatentable over Hodson. Finally, claims 1-3, 5, 8, 10, 12-14, 16-19, 21, 24, 26, 28-30, 32 and 35 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6,354,739 in view of Riddell. With this Response, claims 3, 19, 34, 40, 43, and 53-55 have been cancelled, and claims 1, 17, and 38 have been amended. Claims 1, 2, 4-18, 20-33, 35-39, 41, 42, and 44-52 remain pending in the application and are believed to be in condition for allowance.

Obviousness-type Double Patenting Rejections

With respect to the Double Patenting rejections over claims of U.S. Patent No. 6,354,739 under the judicially created doctrine of obviousness-type double patenting, an appropriate Terminal Disclaimer relating to U.S. Patent No. 6,345,739 is included with this Response. It is

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respectfully submitted that in light of this Terminal Disclaimer, all obviousness-type double patenting rejections have been traversed.

Rejections under 35 U.S.C. § 103

Independent claim 1 has been amended to include all limitations of claim 3 whereby the tear-resistant film is characterized by a puncture-propagation tear resistance of at least 20 N/ply. Claim 3 was rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell. While conceding that Riddell is silent in teaching a tear strip for use with a packaging material having a puncture-propagation tear resistance of at least 20 N/ply, the Examiner concluded that selection of such a material would have been an obvious design choice to one skilled in the art. As described below, it is respectfully submitted that a requisite suggestion to modify the package of Riddell in the manner advanced by the Examiner does not exist, such that amended claim 1 recites allowable subject matter.

A principal purpose of Riddell is to provide an inexpensive packaging that converts into a display tray upon opening such that retailers can conveniently and inexpensively display the packaged roll goods. In particular, Riddell requires a package having a tear-away opening feature circumscribing the inside of the package that, after opening, enables non-discarded portions of the package to be utilized as retail display containers for the enclosed contents. The transition from package to display trays is illustrated in Figures 2 and 4. Upon tearing away the opening means, a sidewall 7 of the package is removed, thereby leaving the top and bottom of the packaging material to form two trays 16 for displaying the enclosed product.

Regardless of the location and positioning of the opening means in relation to the package configuration, a crucial aspect of Riddell is the type of packaging material utilized. In order to satisfy the intended use of the Riddell packaging, the packaging material itself must be structurally rigid to hold the roll products and serve as a display tray upon opening. It is for this reason that Riddell is focused upon the use of heavy duty kraft paper as the packaging material. Multiple, separable plies of heavy duty kraft paper are highly similar in rigidity to a cardboard box; the exact material Riddell intends to replace (Riddell, col. 1, lines 7 – 16). Kraft paper inherently has a puncture-propagation tear resistance of much less than 20N/ply as it is a paper

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product. Thus, as acknowledged by the Examiner, the limitation of 20 N/ply is not taught by the kraft paper embodiment of amended claim 1. With respect to other packaging materials, Riddell specifically describes that these other packaging materials are similar to kraft paper (Riddell, col. 1, lines 19-22). Thus, although Riddell references "polyethylene films", this is inherently limited to a polyethylene film having a puncture-propagation tear resistance of less than 20N/ply (e.g., see page 17 of the pending application, Table 2, the puncture-propagation tear resistance value for "PET" film). Thus, nothing in Riddell suggests the 20 N/ply limitation of amended claim 1.

In fact, Riddell teaches away from the invention of amended claim 1. First, Riddell is focused upon a less expensive package; films exhibiting at least a 20 N/ply puncture-propagation tear resistance are expensive, such that Riddell cannot be viewed as suggesting their implementation. Further, in order to provide sufficient stiffness to both maintain the product(s) and serve as a display tray upon opening, the packaging material must be inherently stiff. Tear resistant film having a puncture-propagation tear resistance of at least 20N/ply do not exhibit sufficient stiffness to serve as a display tray. If applied to the configuration of Riddell, this film would, once torn, either lose its "tightness" about the contained roll products such that the products would fall out; or would remain so tight about the products that they could not be removed. This inherent characteristic is evidenced by examples of the present invention, such as FIGS. 8A, 8B, and 10-12, whereby the contained product(s) are placed on a separate tray apart from the packaging film itself. Thus, Riddell's reference to a polyethylene film cannot be viewed as providing the requisite suggestion advanced by the Examiner; the film of amended claim 1, while highly useful for shipping purposes, will simply not provide the display trays required of Riddell such that Riddell teaches away from the invention of amended claim 1.

Accordingly, it is respectfully submitted that it would not be obvious for one skilled in the art to modify the package taught by Riddell to apply to package materials other than kraft paper or other similar material, including the continuous, tear-resistant film characterized by a puncture-propagation tear resistance of at least 20 N/ply as set forth in amended claim 1. Therefore, it is respectfully submitted that amended independent claim 1 is not taught or otherwise suggested by Riddell, and is in allowable form.

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In addition to the amendments to independent claim 1, independent claims 17 and 38 have been amended to include the limitations of claims 19 and 43, respectively. Amended claim 17 recites a packaged good article comprising an article and a package, wherein the package comprises a continuous, tear-resistant film having a puncture-propagation tear resistance of at least 20 N/ply and forming an enclosed region within which the article is contained, and further including a tearable strip configured to tear an opening through the film for accessing the article upon tearing of the tearable strip. Amended independent claim 38 recites a method of packaging an article comprising providing an article, providing a continuous, tear-resistant film having a puncture-propagation tear resistance of at least 20 N/ply, securing the tape strip to a surface of the film, and forming the film to define an enclosed region containing the article. The tearable tape strip is configured to tear an opening through the film for accessing the article upon tearing of the tearable tape strip. For the same reasons as stated above with reference to amended independent claim 1, it is respectfully submitted that amended independent claims 17 and 38 are not taught or suggested by Riddell and, thus, are similarly allowable.

Claims 2, and 4-16 depend from amended claim 1; claims 18, 20-33, and 35-37 depend from amended claim 17; and claims 39, 41, 42, and 44-52 depend from amended claim 38. As previously described, it is respectfully submitted that amended claims 1, 17, and 38 are not taught or otherwise suggested by the cited reference. Therefore, it is also submitted that claims 2, 4-16, 18, 20-33, 35-37, 39, 41, 42, and 44-52 are similarly allowable.

CONCLUSION

It is believed that all claims are now in a condition for allowance. Notice to that effect is respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 500471.

Attached hereto is a marked-up version of the changes made to the specification and/or the claims by the current Amendment. The attached pages are captioned "**VERSION WITH MARKINGS TO SHOW CHANGES MADE**".

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The Examiner is invited to contact the Applicants' Representative at the below-listed telephone number if there are any questions regarding this response.

Respectfully submitted,

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By their attorneys,

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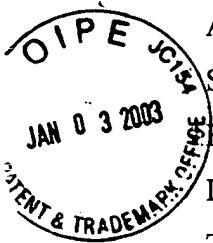
Date: December 26, 2002
TAC:jmc

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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Commissioner for Patents, Washington, D.C., 20231 on this 26th day of December, 2002.

By Timothy A. Czaja
Name: Timothy A. Czaja

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicant: Timothy V. Stagg et al.

Examiner: Robert A. Madsen

Serial No.: 09/728,697

Group Art Unit: 1761

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AMENDMENT AND RESPONSE

Commissioner for Patents
Washington, D.C. 20231

**VERSION WITH MARKINGS
TO SHOW CHANGES MADE**

Dear Sir/Madam:

This Amendment is responsive to the Office Action mailed September 25, 2002. Please amend the above-identified patent application as follows:

IN THE CLAIMS

Please cancel claims 3, 19, 34, 40, 43, and 53-55 and amend claims 1, 17, and 38 as follows:

1.(Amended) Packaging for containing an article, the packaging comprising:

a continuous, tear-resistant film formable to define an enclosed region for containing an article, wherein the film is characterized by a puncture-propagation tear resistance of at least 20 N/ply; and

a tearable tape strip secured to the film;

wherein the tearable tape strip is configured to tear an opening through the film for accessing the enclosed region upon tearing of the tearable tape strip.

2. The packaging of claim 1, wherein the film is not otherwise cleanly tearable.

3.(Cancelled) ~~The packaging of claim 1, wherein the film is characterized by a puncture-propagation tear resistant greater than 20 N/ply.~~

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4. The packaging of claim 1, wherein the film is tough and exhibits stretching before tearing in response to a tearing force imparted at a nick formed in the film.
5. The packaging of claim 1, wherein the film includes a material selected from the group consisting of polyethylene, linear low-density polyethylene, low-density polyethylene, Surlyn® ionomer film, Kraton/polypropylene blends, copolymers of propylene and ethylene, blends of polypropylene and polyethylene, nylon, polyvinyl chloride, and polyvinylidene chloride.
6. The packaging of claim 1, wherein the film includes multiple layers.
7. The packaging of claim 6, wherein the film includes a first layer of polyethylene and a second layer of polypropylene.
8. The packaging of claim 1, wherein the film defines an inner surface and an outer surface, and further wherein the tearable tape strip is secured to the inner surface.
9. The packaging of claim 8, wherein the film further includes indicia disposed on the outer surface opposite the tearable tape strip, the tearable tape strip being located so as to not obstruct viewing of the indicia.
10. The packaging of claim 1, wherein the tearable tape strip is selected from the group consisting of reinforced strapping tape, tensilized polypropylene, and filament reinforced tape.
11. The packaging of claim 1, wherein the tearable tape strip is reinforced strapping tape having a width of at least 8 mm.
12. The packaging of claim 1, wherein the tearable tape strip is defined by a opposing, longitudinal edges and a central section, the central section being tearable relative to the opposing, longitudinal edges such that the tearable tape strip is internally tearable.

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13. The packaging of claim 1, wherein the tearable tape strip is defined by a body and a tab, and further wherein the film is unweakened in the area of interface with the body.

14. The packaging of claim 1, wherein only a single tearable tape strip is provided.

15. The packaging of claim 1, wherein the tearable tape strip is a first tearable tape strip configured to be internally tearable and is secured to an inner surface of the film, the packaging further comprising:

a second, internally tearable tape strip secured to an outer surface of the film substantially opposite the first tearable tape strip;

wherein at least a portion of a width of the first tearable tape strip overlaps at least a portion of a width of the second tearable tape strip such that a single band of material can be unitarily torn from both of the tearable tape strips.

16. The packaging of claim 1, further comprising:

a cover tape secured to a surface of the film opposite the tearable tape strip.

17.(Amended) A packaged good article comprising:

an article; and

a package comprising:

Aa continuous, tear-resistant film forming an enclosed region within which the article is contained, wherein the film is characterized by a puncture-propagation tear resistance of at least 20 N/ply; and;

a tearable tape strip secured the film;

wherein the tearable tape strip is configured to tear an opening through the film for accessing the article upon tearing of the tearable tape strip.

18. The packaged good article of claim 17, wherein the film is not otherwise cleanly tearable.

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~~19.(Cancelled) The packaged good article of claim 17, wherein the film is characterized by a puncture propagation tear resistance greater than 20 N/ply.~~

20. The packaged good article of claim 17, wherein the film is tough and exhibits stretching before tearing in response to a tearing force imparted at a nick formed in the film.

21. The packaged good article of claim 17, wherein the film includes a material selected from the group consisting of polyethylene, linear low-density polyethylene, low-density polyethylene, Surlyn® ionomer film, Kraton/polypropylene blends, copolymers of propylene and ethylene, blends of polypropylene and polyethylene, nylon, polyvinyl chloride, and polyvinylidene chloride.

22. The packaged good article of claim 17, wherein the film includes multiple layers.

23. The packaged good article of claim 22, wherein the film includes a first layer of polyethylene and a second layer of polypropylene.

24. The packaged good article of claim 17, wherein the film defines an inner surface and an outer surface, and further wherein the tearable tape strip is secured to the inner surface.

25. The packaged good article of claim 24, wherein the film further includes indicia disposed on the outer surface opposite the tearable tape strip, the tearable tape strip being located so as to not obstruct viewing of the indicia.

26. The packaged good article of claim 17, wherein the tearable tape strip is selected from the group consisting of reinforced strapping tape, tensilized polypropylene, and filament reinforced tape.

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27. The packaged good article of claim 17, wherein the tearable tape strip is reinforced strapping tape having a width of at least 8 mm.

28. The packaged good article of claim 17, wherein the tearable tape strip is defined by a opposing, longitudinal edges and a central section, the central section being tearable relative to the opposing, longitudinal edges such that the tearable tape strip is internally tearable.

29. The packaged good article of claim 17, wherein the tearable tape strip is defined by a body and a tab, and further wherein the film is unweakened in the area of interface with the body.

30. The packaged good article of claim 17, wherein only a single tearable tape strip is provided.

31. The packaged good article of claim 17, wherein the tearable tape strip is a first tearable tape strip configured to be internally tearable and is secured to an inner surface of the film, the packaging further comprising:

a second, internally tearable tape strip secured to an outer surface of the film substantially opposite the first tearable tape strip;

wherein at least a portion of a width of the first tearable tape strip overlaps at least a portion of a width of the second tearable tape strip such that a single band of material can be unitarily torn from both of the tearable tape strips.

32. The packaged good article of claim 17, further comprising:

a cover tape secured to a surface of the film opposite the tearable tape strip.

33. The packaged good article of claim 17, wherein the article includes a food product.

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34.(Cancelled) ~~The packaged good article of claim 17, wherein the article includes a plurality of products.~~

35. The packaged good article of claim 17, wherein the tear-resistant film is wrapped about the article.

36. The packaged good article of claim 17, wherein the package substantially conforms to a shape of the article.

37. The packaged good article of claim 17, wherein the article includes a base supporting at least one product, at least a portion of the package conforming to a shape of the base.

38.(Amended) A method of packaging an article, the method comprising:

providing an article;

providing a continuous, tear-resistant film characterized by a puncture-propagation tear resistance of at least 20 N/ply;

securing a tearable tape strip to a surface of the film; and

forming the film to define an enclosed region containing the article;

wherein the tearable tape strip is configured to tear an opening through the film for accessing the article upon tearing of the tearable tape strip.

39. The method of claim 38, wherein providing an article includes providing a food product.

40.(Cancelled) ~~The method of claim 38, wherein providing an article includes providing an article having an irregular shape.~~

41. The method of claim 38, wherein providing an article includes providing a base supporting at least one product.

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42. The method of claim 38, wherein providing a tear-resistant film includes providing a film that is not otherwise cleanly tearable.

43. ~~(Cancelled) The method of claim 38, wherein providing a tear-resistant film includes providing a film that is characterized by a puncture propagation tear resistance greater than 20 N/ply.~~

44. The method of claim 38, wherein providing a tear-resistant film includes providing a tough film that exhibits stretching before tearing in response to a tearing force imparted at a nick formed in the film.

45. The method of claim 38, wherein providing a tear-resistant film includes providing a film that includes a material selected from the group consisting of polyethylene, linear low-density polyethylene, low-density polyethylene, Surlyn® ionomer film, Kraton/polypropylene blends, copolymers of propylene and ethylene, blends of polypropylene and polyethylene, nylon, polyvinyl chloride, and polyvinylidene chloride.

46. The method of claim 38, wherein providing a tear-resistant film includes providing a multi-layer film including a first layer of polyethylene and a second layer of polypropylene.

47. The method of claim 38, wherein a single, tearable tape strip is secured to a surface of the film.

48. The method of claim 38, wherein the film defines an inner surface and an outer surface, and further wherein the tearable tape strip is secured to an inner surface of the film.

49. The method of claim 38, wherein forming the film to define an enclosed region includes shrink-wrapping the film about the article.

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50. The method of claim 38, wherein forming the film to define an enclosed region includes skin packaging the film about the article.

51. The method of claim 38, wherein forming the film to define an enclosed region includes wrapping the film about the article such that the film conforms with a shape of the article.

52. The method of claim 38, wherein the tearable tape strip is defined by a body and a tab, and further wherein securing a tearable tape strip to a surface of the film includes locating the body along an unweakened area of the film.

53.(Cancelled)~~A method of opening a packaged good article comprising:~~

~~providing a packaged good article including an article contained within an enclosed region formed by a continuous, tear-resistant film having a tearable tape strip secured to a surface thereof; and~~
~~controllably tearing an opening through the film by tearing the tearable tape strip.~~

54.(Cancelled)~~The method of claim 53, wherein providing a packaged good article includes providing a continuous, tear-resistant film wrapped about an article such that the film substantially corresponds to a shape of the article.~~

55.(Cancelled)~~The method of claim 53, wherein controllably tearing an opening through the film includes internally tearing a single tearable tape strip.~~